

REMARKS

Applicant has studied the Final Office Action dated February 20, 2008. Claims 25-28 and 31-49 are pending. Claims 28, 31 and 35 have been amended to more clearly disclose the invention. New claims 40-49 have been added to claim the disclosed invention more completely. Claims 25, 31, and 35 are independent claims.

It is respectfully submitted that the claim amendments presented herein do not add any new matter or features and do not significantly alter the scope of the claims. Consequently, the claim amendments should not require any further search by the Examiner. Accordingly, entry of the amendments to the application, as an earnest attempt to advance prosecution, is respectfully requested.

§ 103 Rejection

Claims 31-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shibata et al. ("Shibata" US 7,084,919) in view of Yoshida et al. ("Yoshida" US 6,690,417). This rejection is respectfully traversed.

It is respectfully noted that the Federal Circuit has provided that an Examiner must establish a case of prima facie obviousness. Otherwise the rejection is incorrect and must be overturned. As the court recently stated in In re Rijkaert, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993):

"In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. 'A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.' If the examiner fails to establish a prima facie case, the rejection is improper and will be overturned." (citations omitted.)

With regard to the rejection of independent claims 31 and 35, it is respectfully noted that the Examiner asserts, at paragraph 3 of the Office action, that Shibata discloses a "hinge (31 in Figs. 1 and 3)" configured to connect the lower body with the upper body, wherein the "hinge is located at an end portion of an end side of the lower

body,” wherein the end side is located between the front and rear sides, citing col. 9, lines 64-65 and Fig. 3. Applicant respectfully disagrees with the Examiner’s interpretation of Shibata.

It is respectfully noted that the specification of Shibata, including the cited portion, is silent about the exact location of the asserted hinge (opening/shutting axis 31) because the cited portion merely discloses that “[t]he axial unit 30 is provided with an opening/shutting axis 31 and a rotation axis 32.” Therefore, it is respectfully submitted that the specification of Shibata fails to disclose or suggest that the hinge is located at one lateral end portion of the upper end portion of the lower body, as recited in independent claims 31 and 35 and exemplified in Fig. 3 of the present application. Moreover, it is respectfully submitted that since the location of the hinge is important to accommodate the optical zoom camera in the presently claimed invention, the hinge may not be located arbitrarily, as discussed below.

Since the specification of Shibata fails to disclose suggest that the hinge is located at one lateral end portion of the upper end portion of the lower body, as recited in independent claims 31 and 35, the Examiner’s assertion should be supported by the drawings in Shibata. It is respectfully noted that “[t]he drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art,” “[d]rawings and pictures can anticipate claims if they clearly show the structure which is claimed,” and “the picture must show all the claimed structural features and how they are put together.” M.P.E.P. § 2125.

However, upon review of the drawings in Shibata, it is respectfully noted that the asserted hinge or “opening/shutting axis 31” is located at a **center portion** of an upper end portion of the asserted lower body 10 in Fig. 3. Moreover, it is respectfully noted that col. 9, line 65 – col. 10, line 3 of Shibata discloses that the “opening/shutting axis 31 is connected to the portable terminal so that the main unit and the flip unit can be relatively rotatable, and the rotation axis 32 is connected there in a rotatable way in the vertical direction across the rotation of the opening/shutting axis 31.” In view of the location of the opening/shutting axis 31 and rotation axis 32 described in this passage and shown in Figs. 3 and 16, it is respectfully submitted that the asserted hinge or “opening/shutting axis 31” of Shibata is located at a **center portion** of an upper end

portion of the asserted lower body, not at one lateral end portion of the upper end portion of the lower body, as recited in independent claims 31 and 35.

With regard to Yoshida, which was cited by the Examiner for teaching a foldable camera phone implemented with an optical zoom camera, it is respectfully noted that the cited portion, col. 7, lines 26-34 discloses that the lens 108 is a zoom lens of the three-time magnification, which is structured to “shift the zooming positions” manually and the “lens position” is given to the camera microcomputer 211. It is respectfully submitted that the distance between the zoom lens and the camera needs to be manipulated to adjust the zooming positions, and thus, sufficient space must be provided in the optical zoom camera of Yoshida to accommodate a structure to shift the zooming positions.

It is noted that the asserted zoom camera 33 of Shibata coupled to a lateral side of the hinge and positioned to face outward from the lateral side of the hinge does not have a sufficient space to accommodate the asserted optical zoom camera of Yoshida because the asserted hinge 31 is located at the center portion in between the asserted camera 33 and operational dial 34, thus providing limited space in the camera to accommodate the optical zoom camera of Yoshida, as shown in Figs. 2 and 3 of Shibata. Therefore, it is respectfully submitted that the optical zoom camera disclosed in Yoshida cannot be combined with the asserted folding type mobile communication terminal of Shibata as asserted by the Examiner due to the insufficient space in the asserted zoom camera 33 of Shibata to accommodate the asserted optical zoom camera of Yoshida.

Therefore, it is further respectfully submitted that Shibata fails to disclose or suggest, at least, the hinge is located at one lateral end portion of the upper end portion of the lower body, as recited in independent claims 31 and 35. Moreover, it is respectfully submitted that Yoshida, as shown in Figs. 1 and 2, fails to cure the deficiencies of Shibata with respect to the hinge is located at one lateral end portion of the upper end portion of the lower body, as recited in independent claims 31 and 35.

In view of the above arguments, it is respectfully asserted that the Examiner has failed to establish a prima facie case of obviousness and, therefore, independent claims 31 and 35 are allowable over the cited combination of references, as are claims 32-34,

40, and 41, which depend from claim 31, and claims 36-39, 42, and 43, which depend from claim 35.

Allowable Subject Matter

Applicant graciously acknowledges the Examiner's allowance of claims 25-28. It is respectfully noted that claim 28 has been amended to correct a typographical error.

New Claims

Claims 40-49 have been newly added. Support for claims 40, 41, 45, and 46 can be found, for example, at paragraph [0020] of the specification as originally filed. Support for claims 42-44 and 47-49 can be found, for example, at paragraph [0024] of the specification. Accordingly, no new matter has been added.

It is respectfully noted that the Examiner asserted, at page 3 of the Office action, that Shibata is silent about an optical zoom, but Yoshida teaches an optical zoom camera 108, citing Figs. 1 and 2, and col. 7, lines 26-34. However, it is respectfully submitted that description of the asserted optical zoom camera is absent in Yoshida because Yoshida merely discloses that the lens 108 is a zoom lens of the three-time magnification, has a focal length of 24 mm to 103 mm, and the lens position is given to the camera microcomputer 211 by means of a hole device.

Moreover, it is respectfully submitted that none of the cited references discloses or suggests the features, such as a pinion and rack, as recited in claims 42-44 and 47-49. Therefore, it is respectfully asserted that dependent claims 40-49 are patentable not only by virtue of their dependency upon their respective independent claims, but also by virtue of their distinctive features (in particular, claims 42-44 and 47-49).

CONCLUSION


In light of the above remarks, Applicant submits that the present Amendment places all claims of the present application in condition for allowance. Reconsideration of the application is requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

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